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**Subject:** Afternoon Energy: In with the new — More letters and more hearings for Pruitt — FERC tightens cyber standards

By Garrett Ross and David Beavers | 04/24/2018 05:04 PM EDT

*With help from Alex Guillén and Eric Wolff*

**IN WITH THE NEW:** EPA's controversial new science policy was announced by Administrator Scott Pruitt today, after a speedy review by the OMB, and just two days before Pruitt is scheduled to face intense questioning over his reported ethical lapses. The proposed rule, based on legislation pushed by House Science Chairman Lamar Smith (R-Texas), seeks to bar the agency from relying on studies that don't publicly disclose all their data when crafting policy.

"It is a **codification of an approach** that says as we do our business at the agency, the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace," Pruitt said at an invitation-only meeting at EPA headquarters with supporters of the policy today.

**While the proposal has been discussed for weeks** by Pruitt, the White House received it for interagency review just last week. Such swift review is very rare for the OMB, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

**The idea has faced long-standing opposition**, a point which opponents of the move made in a letter to Pruitt on Monday. Smith's legislation "failed to pass Congress for several years for good reason," nearly 1,000 scientists organized by the Union of Concerned Scientists, including former EPA career staffers, wrote in the letter. They said the plan would "weaponize 'transparency' to facilitate political interference in science-based decisionmaking." Read more from Emily Holden and Annie Snider here.

**Welcome to Afternoon Energy!** We're your hosts Garrett Ross and David Beavers. Send suggestions, news and tips to [gross@politico.com](mailto:gross@politico.com), [dbeavers@politico.com](mailto:dbeavers@politico.com), [mdaily@politico.com](mailto:mdaily@politico.com) and [njuliano@politico.com](mailto:njuliano@politico.com), and keep up with us on Twitter at [@garrett\\_ross](https://twitter.com/garrett_ross), [@davidabeavers](https://twitter.com/davidabeavers), [@dailym1](https://twitter.com/dailym1), [@nickjuliano](https://twitter.com/nickjuliano), [@Morning\\_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

**POLITICO's Ben White** is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. **Sign up to keep up with your daily conference coverage.**

**MORE LETTERS AND MORE HEARINGS:** More letters and hearings came from lawmakers' offices and other groups today regarding ongoing and new questioning of Pruitt's behavior.

— **Sens. Tom Carper (D-Del.) and Sheldon Whitehouse (D-R.I.)** wrote in a letter to EPA ethics chief Kevin Minoli that a 2013 waiver covering Pasquale "Nino" Perrotta published in The New York Times earlier this month "is insufficient on its face for at least three reasons" if it was the basis for clearing a contract to look for listening devices in Pruitt's office. The Democrats asked Minoli to produce by May 4 all approvals and denials for outside employment at EPA since 2009. Read more from Alex here.

— **Sen. Lisa Murkowski (R-Alaska), meanwhile,** said Pruitt is scheduled to testify in May before the Senate Appropriations subcommittee that oversees his budget, of which she is chairwoman. She also said it was "absolutely appropriate" for the Environment and Public Works Committee to hold an oversight hearing on the administrator's conduct in office, an idea that has been endorsed by multiple Republicans. Read more from Pro's Anthony Adragna [here](#).

— **Virginia Democratic Reps. Don Beyer and Gerry Connolly** today [wrote](#) to EPA's inspector general, asking the watchdog to look into Albert "Kell" Kelly, the former Oklahoma banker with longtime connections to Pruitt who now runs EPA's Superfund program. "Mr. Kelly came to this position without the necessary qualifications, and with serious and still-unexplained red flags, and his conducts has raised ethical, regulatory and potential legal issues that we believe your office should examine," they wrote. Read more from Alex [here](#).

— **And the liberal group Citizens for Responsibility and Ethics in Washington** [asked EPA's IG](#) to review "the process by which ethics advice and determinations are provided to EPA Administrator Scott Pruitt and other EPA appointees by agency ethics officials and other legal advisors." CREW added: "The clearly inadequate handling of the numerous, increasingly outrageous ethical issues that have recently come to light suggests that the process is broken, and may be compromised by the fear of retaliation against officials who question Administrator Pruitt's conduct."

**FERC TIGHTENS CYBER STANDARDS:** FERC today released new cybersecurity [standards](#) for laptops, thumb drives and other devices that frequently connect to "low-impact" parts of the grid, Eric reports. The commission approved the new standards last week and will publish them in the Federal Register on Wednesday. FERC Chairman Kevin McIntyre has said he will make improving grid cybersecurity a top priority during his tenure. Read more from Eric [here](#).

**MNUCHIN TO CHINA:** President Donald Trump today said he is sending his Treasury secretary, Steven Mnuchin, to China "in a few days" to try to negotiate a deal in hopes of eliminating the need for the White House to impose tariffs on as much as \$150 billion in Chinese exports, Pro's Doug Palmer writes. The Trump administration published a list of roughly \$50 billion worth of Chinese exports that could be hit with a new 25 percent tariff, and Beijing responded with its own list of \$50 billion worth of American goods that could be subject to retaliatory duties. Trump did not specify who else would be part of the delegation to China. Read more [here](#).

**D.C. CIRCUIT SIDES WITH CITY AGAINST FERC:** The D.C. Circuit Court of Appeals said FERC overstepped its bounds when it tried to regulate Clarksville, Tenn.'s municipal gas service. FERC said that because Clarksville was selling gas in Kentucky — a byproduct of supplying Fort Campbell, which straddles state lines — the city is subject to some FERC rules under the Natural Gas Act. But the court noted that the act excludes municipal utilities and [found](#) in favor of Clarksville.

**RALLY CAPS ON:** The American Federation of Government Employees is planning a "[Rally For Government That Works For America](#)" from noon until 1 p.m. Wednesday, for what the group is describing as a rally "in support of EPA Workers."

## QUICK HITS:

— Energy, a bright spot in NAFTA talks, bogged down by dispute over rule change, [The Wall Street Journal](#).

— Controversial contractor was behind island-wide blackout, as Puerto Rico debates full privatization, [The Intercept](#).

— AES coal plant closing in Ohio sheds workers in small communities, [Bloomberg Law](#).

## WIDE WORLD OF POLITICS:

- Trump's VA nomination in trouble as allegations of misconduct emerge
- Flipping Cohen against Trump may not be so easy
- Trump defiant over Iran deal as deadline approaches

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### Stories from POLITICO Pro

#### **Pruitt scales back EPA's use of science** [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:17 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman [Lamar Smith](#) (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. [Mike Rounds](#) (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a [letter](#) opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year

after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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**Democrats question outside work approval for Pruitt's security chief [Back](#)**

By Alex Guillén | 04/24/2018 01:20 PM EDT

Two Democratic senators today questioned whether the head of EPA Administrator Scott Pruitt's security detail, Pasquale "Nino" Perrotta, had been properly cleared for outside work at the security firm he founded.

In a letter to Kevin Minoli, EPA's top ethics official, Sens. Tom Carper (D-Del.) and Sheldon Whitehouse (D-R.I.) note that a 2013 waiver covering Perrotta's outside work was published by the New York Times earlier this month.

But if that was the basis for clearing Perrotta's outside security work with Sequoia Security Group, "it is insufficient on its face for at least three reasons," the lawmakers wrote.

The clearance expired on March 5, 2018, and should have been revised after Perrotta's duties at EPA changed as he was promoted to the head of Pruitt's security detail last year, Carper and Whitehouse wrote. They also argued that Perrotta did not fully represent the scope or nature of his outside work on the authorization forms.

The Democrats asked Minoli to produce all approvals and denials for outside employment at EPA since 2009.

Last April, a member of Sequoia's management team's practice — Edwin Steinmetz Associates — reportedly received a contract to look for listening devices in Pruitt's office.

**WHAT'S NEXT:** Carper and Whitehouse asked for a response by May 4.

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**Murkowski: Pruitt will testify to Senate appropriators** [Back](#)

By Anthony Adragna | 04/24/2018 03:03 PM EDT

EPA Administrator Scott Pruitt is scheduled to testify in May before the Senate appropriations subcommittee that oversees his budget, Sen. [Lisa Murkowski](#) (R-Alaska), who chairs the panel, said today.

Murkowski did not elaborate on her plans for the hearing or how much it would delve into Pruitt's ethics and spending. But she said it was "absolutely appropriate" for the Environment and Public Works Committee to hold an oversight hearing on the administrator's conduct in office, an idea that has been endorsed by [multiple Republicans](#) on the authorization committee.

"I'm hoping they move on it sooner than later," Murkowski said of the EPW committee.

EPW Chairman [John Barrasso](#) (R-Wyo.) said today he has "serious questions" about how Pruitt has handled taxpayer dollars but stopped short of announcing plans for Pruitt to testify.

"We'll see what comes out of the hearings this Thursday," Barrasso said, referring to Pruitt's scheduled appearance of two House hearings that day.

Barrasso said he planned to send additional letters to EPA, following his recent request for details on the administrator's use of four separate email accounts. In response to that earlier letter, EPA [told him](#) all of Pruitt's accounts are searched in response to public records requests.

"You want to make sure taxpayers are getting value for their dollars," Barrasso told reporters today. "We want to make sure money is being spent appropriately."

**WHAT'S NEXT:** Murkowski declined to say when Pruitt would appear before her Appropriations Subcommittee on Interior, Environment and Related Agencies, but she has [said previously](#) it was expected to be the week of May 7.

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## **Democrats request IG probe of Pruitt banker-turned-Superfund chief [Back](#)**

By Alex Guillén | 04/24/2018 03:30 PM EDT

Two House Democrats today [asked](#) EPA's inspector general to look into Albert "Kell" Kelly, the former Oklahoma banker with longtime connections to Administrator Scott Pruitt who now runs EPA's Superfund program.

"Mr. Kelly came to this position without the necessary qualifications, and with serious and still-unexplained red flags, and his conducts has raised ethical, regulatory and potential legal issues that we believe your office should examine," wrote Reps. [Don Beyer](#) and [Gerry Connolly](#), both Virginia Democrats.

Kelly previously ran Tulsa-based SpiritBank, and last year agreed to pay a \$125,000 fine under a deal with the FDIC that also banned him from banking for the rest of his life for unspecified violations.

Kelly recently [defended](#) the loan in question, saying there was "nothing untoward about it" and noting that "the bank made money." Pruitt also [said](#) this month that he is unfamiliar with Kelly's banking problems and that they have no bearing on his EPA work.

Pruitt and Kelly have a longstanding financial relationship, according to recent reports. Kelly's bank issued mortgages for homes Pruitt bought in Tulsa and Oklahoma City, as well as for a significant stake Pruitt purchased in a minor league baseball team, the New York Times [reported](#) Saturday.

Aside from his qualifications, the lawmakers also asked the IG to review the Superfund task force run last year by Kelly that EPA later said never generated any meeting notes, communications or other documents under the Freedom of Information Act.

**WHAT'S NEXT:** The IG will decide whether to pursue a review of Kelly.

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## **FERC order tightens cybersecurity standards [Back](#)**

By Eric Wolff | 04/24/2018 10:51 AM EDT

FERC is tightening up security standards for laptops and access controls for certain "low-impact" parts of the grid.

The [order](#) approves parts of a new set of standards submitted by the North American Electric Reliability Corporation. It sets up new standards for thumb drives and laptops and other devices that frequently connect

and disconnect from systems. FERC approved the order last week and released it today ahead of its publication in Wednesday's Federal Register.

FERC also decided not to adopt new standards for access control for systems that connect to other systems that provide key grid services. The commission instead asked NERC to review existing access controls and see if they provided enough security. It also decided that provisions setting standards for mitigating the damage from viruses were not sufficiently clear, and asked NERC try again.

FERC Chairman Kevin McIntyre has said that improving cybersecurity from the grid is one of his highest priorities while chairman. The Trump administration in March revealed that Russian hackers penetrated power plant control systems to the extent that they could turn off the power, if they wanted.

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**Trump: Mnuchin going to China soon for trade talks** [Back](#)

By Doug Palmer | 04/24/2018 12:17 PM EDT

U.S. Treasury Secretary Steven Mnuchin will be traveling to China in the hopes of negotiating a deal to eliminate the need for the United States to impose duties on as much as \$150 billion of China's exports to the U.S., President Donald Trump said today.

"The treasury secretary, Steve Mnuchin, will be going to China in a few days to negotiate on trade," Trump said at the start of a White House meeting with French President Emmanuel Macron. "I think China is very serious. We're very serious. We have no choice but to be very serious. You know we've put on very substantial tariffs. And that will continue unless we make a trade deal."

Trump said the United States was sending a delegation to China at Beijing's request, but did not say whether U.S. Trade Representative Robert Lighthizer or Commerce Secretary Wilbur Ross would be part of the team.

"They came here recently, and we're going there," Trump said.

Last month, the Trump administration published a list of about \$50 billion worth of Chinese exports that could be hit with a new 25-percent tariff to punish Beijing for alleged intellectual property theft and forced transfer of valuable American technology. After China responded by publishing its own list of \$50 billion worth of American goods that could be subject to retaliatory duties, Trump upped the ante and asked Lighthizer to consider another \$100 billion worth of Chinese exports that could be targeted with new duties. That second list has not been published.

Trump again complained about the size of the U.S. trade deficit with China, but expressed optimism the two sides could reach an agreement without duties being imposed.

"I think we're — we've got a very good chance of making a deal," Trump said, referring to Chinese President Xi Jinping as "a terrific guy and a friend of mine."

*Maya Parthasarathy contributed to this alert.*

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## **Trump's VA nomination in trouble as allegations of misconduct emerge** [Back](#)

By Andrew Restuccia, Matthew Nussbaum and Burgess Everett | 04/24/2018 09:33 AM EDT

President Donald Trump pledged on Tuesday to stand behind his embattled pick to lead the Department of Veterans Affairs, even as support on Capitol Hill eroded and Trump himself opened the door for Rear Adm. Ronny Jackson to withdraw himself from consideration.

"I said to Dr. Jackson, what do you need it for?" Trump said repeatedly at a news conference, as allegations of workplace misconduct threw the nomination in doubt and led the Senate to postpone a hearing pending an investigation.

"He's a fine man. I'll always stand behind him," Trump said about the White House physician, adding it is Jackson's choice to remain the nominee or withdraw. "What does he need it for? To be abused by a bunch of politicians that aren't thinking nicely about our country? I really don't think personally he should do it, but it's totally his ... decision."

The mixed signals — a pledge to defend Jackson coupled with advice that he withdraw from consideration — came as Jackson appeared to dig in, traveling to Capitol Hill and saying he looks forward to the hearing, whenever it may be.

Lawmakers have delayed the confirmation — which was scheduled for Wednesday — amid allegations of workplace misconduct and over-prescribing medication, according to multiple people briefed on the issue. The allegations have so far mostly been word-of-mouth, and the Senate Veterans' Affairs Committee is demanding 12 years of documents about Jackson's service as the presidential physician and in the White House medical unit.

Trump, who feels strongly that Jackson has been unfairly targeted by the press and his political opponents, is sympathetic to the doctor's situation, according to a White House official. During Tuesday's news conference, Trump wasn't sending a message to Jackson that he should step down, the official said. The president was instead publicly reflecting his frustration at seeing somebody he likes face such intense and personal criticism.

The president and many in the White House are deeply skeptical of the allegations against Jackson, even as they suspect that other administration officials are spreading them. Indeed, the fracas over Jackson's nomination has again brought to the surface a sense among many White House aides that forces in the building are working against them.

The White House official stressed that there are no current plans to push Jackson out. To the contrary, the White House plans to stand behind Jackson if he decides to move forward with the nomination, as Trump said he would.

But others in the White House believe it is foolhardy to continue backing a nominee who faced a rocky confirmation even before the rumors began circulating, given his lack of experience leading such a large organization. One administration official privately expressed annoyance that Trump's penchant for nominating his friends and allies with little vetting has led to another confirmation mess.



White House officials first became aware of the rumors about Jackson when Capitol Hill aides passed along what they were hearing, the White House official said.

Privately, Republicans are fretting that a flood of bad press could prove unsustainable and derail the nomination to lead the sprawling agency.

"I can't tell" if it's in trouble, said Senate Majority Whip John Cornyn (R-Texas). "I don't know if the allegations are credible. If they are it's a serious matter."

Senate Majority Leader Mitch McConnell (R-Ky.) was noncommittal on Tuesday morning when asked if he was confident in Jackson. "We are going to wait and see what the administration and Chairman Isakson recommend," McConnell said, referring to Senate Veterans Affairs Committee Chairman Johnny Isakson (R-Ga.).

Members of Trump's legislative affairs team huddled Tuesday morning to discuss the nomination as reports of allegations proliferated. After the meeting, a White House official said there were no current plans to withdraw the nomination, and the press shop separately issued a public statement in support of Jackson.

"Admiral Jackson has been on the front lines of deadly combat and saved the lives of many others in service to this country," said deputy White House press secretary Hogan Gidley in a statement on Tuesday. "He's served as the physician to three Presidents—Republican and Democrat—and been praised by them all. Admiral Jackson's record of strong, decisive leadership is exactly what's needed at the VA to ensure our veterans receive the benefits they deserve."

Meanwhile, Jackson was making his case for his nomination on Tuesday despite the firestorm, meeting with VA Committee member Sen. Jerry Moran (R-Kan.) in his Capitol Hill office as a horde of media waited outside.

"He does deny that he's done anything wrong in his service to the country and particularly his time at the White House," Moran said after meeting with Jackson. "He knows of nothing that would prohibit him from being qualified."

A failed nomination would be an embarrassing debacle for the White House, and the postponed hearing is reminiscent of Andy Puzder's failed nomination to be Labor Secretary last year. Republicans are operating under a razor-thin majority of 51 senators, several of whom have already expressed concern with Jackson's lack of experience to operate the massive Veterans Affairs agency.

Isakson and ranking member Jon Tester (D-Mont) wrote Trump a letter on Tuesday asking for "all documentation pertaining to Rear Admiral Jackson's service in the White House medical unit and as Physician to the President."

In the meantime, senators are being cautious about the claims of misconduct.

"Swirl of allegations happens all the time. You have to show proof. Haven't seen that yet," said Sen. Joe Manchin (D-W.Va.), a member of the committee.

Trump named the White House physician to lead the sprawling bureaucracy after firing David Shulkin, even after Isakson personally implored Trump to keep Shulkin. The move raised eyebrows in Congress and among veterans groups because Jackson, who was also former President Barack Obama's physician, has never led a large organization.

Veterans groups said the delay and additional vetting for Jackson is appropriate.

"This is an important cabinet position. If the Senate needs more time to properly vet this nominee, they should take that time," said Dan Caldwell, executive director of Concerned Veterans for America. "I just hope that the confirmation process for the VA secretary doesn't distract from passing legislation to fix the VA's Choice and community care programs."

Democrats took an aggressive posture toward the allegations against Jackson, demanding more information and saying the scandal reflects poorly on Trump's White House.

"It needs to be addressed. Right now. Today," Sen. Richard Blumenthal (D-Conn.) told POLITICO. "The White House needs to be forthcoming. It has been clearly careless and negligent in vetting."

The nomination will be "unacceptable" unless the White House offers further information, Blumenthal added.

"Maybe one day the president, who we know acts on impulse, had this nominee in the room ... and said: 'Hey, let's put you up without any vetting,'" said Senate Minority Leader Chuck Schumer (D-N.Y.) on Tuesday morning.

As the White House physician, Jackson had already been subjected to a basic background check and review of his past. But multiple people familiar with the process said Jackson did not undergo a thorough vetting ahead of his nomination as veterans affairs secretary.

The concern on Capitol Hill is palpable. Isakson spoke with fellow committee members over the weekend to discuss the "unsubstantiated allegations," Sen. Mike Rounds (R-S.D.) told NPR on Tuesday.

"We have been given a brief sketch of what they are but I'd prefer not to discuss them at this time. As I say, they are unsubstantiated," Rounds said. "The chairman is aware of them. He's discussed them with the White House. ... These are serious allegations and they're ones that we most certainly want to get through and vet properly."

*Elana Schor, Lorraine Woellert and Louis Nelson contributed to this report.*

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**Flipping Cohen against Trump may not be so easy** [Back](#)

By Josh Gerstein | 04/24/2018 05:00 AM EDT

Getting Michael Cohen to rat out President Donald Trump may not be as simple as it sounds.

Although Trump's detractors are rooting for Trump's personal attorney to "flip" on the president and cooperate with special counsel Robert Mueller to escape a potentially harsh prison sentence, legal obstacles make it difficult for lawyers to expose their clients' guarded secrets.

Even if Cohen is determined to break his confidences with Trump, legal ethics might deter federal prosecutors from coaxing him to betray his professional confidences with Trump, legal veterans and experts say.

"This idea of 'flipping' Cohen — they can't just flip a lawyer to testify against a client," longtime defense attorney Harvey Silverglate said. "Even if Cohen doesn't know better, one would think the FBI and the prosecutors would know better."

Silverglate said not only Cohen but prosecutors could be disbarred for overstepping the well-established ethical boundaries.

FBI agents raided Cohen's home and office earlier this month and seized records and electronic devices that reportedly contain communications with Trump, whom Cohen has represented for more than a decade.

Because Cohen was Trump's lawyer, many of those communications are likely covered by the legal principle of attorney-client privilege, which would typically prevent them from being admissible in court.

While the privilege can be waived, only Trump — and not Cohen — has the right to do so.

"It is absolutely the case that, even if he is criminally liable himself, Michael Cohen is not allowed to disclose client confidences learned through the attorney-client relationship about any client without their permission," said Paul Rosenzweig, a former legal adviser to Whitewater independent counsel Kenneth Starr.

Attorneys for Cohen and Trump declined to comment for this story. But other lawyers expect that the president's legal team would vigorously object to Cohen discussing Trump's past dealings to prosecutors. Lawyers for Trump are already fighting in court to block prosecutors' access to information the FBI seized on the grounds that it is covered by privilege.

There are exceptions to what privilege will protect. Communications made with the intent of committing or concealing a crime or fraud are exempted, for instance.

And Cohen is entitled to disclose conversations with Trump that are directly related to charges he might face.

"The ethics rules allow lawyers to disclose client confidences from a representation if the lawyer is charged with wrongdoing arising out of the representation," said New York University law professor Stephen Gillers. "You can't trade on client information unless you're charged with wrongdoing because of the representation of that client."

Lawyers said prosecutors are likely to tread carefully because any misstep could jeopardize the investigation by the U.S. attorney's office in New York into Cohen, which includes his payment of \$130,000 in alleged "hush money" payment to porn star Stormy Daniels, who claims she had sex with Trump and was paid to buy her silence shortly before the 2016 election. Trump says he was unaware of the payment.

That federal probe also reportedly involves Cohen's personal business dealings, including financing of dozens of New York City taxi medallions that Cohen has owned.

Casual treatment of information from Cohen could even put at risk Mueller's investigation into alleged collusion between the Trump campaign and Russia, attorneys said. It was Mueller who uncovered and referred to New York federal prosecutors the information that triggered the raid on Cohen's addresses.

On Saturday, Trump lashed out at press reports that Cohen might choose to "flip" against his former boss and client, but the president also seemed to emphasize that Cohen was engaged in business Trump had nothing to do with.

"Michael is a businessman for his own account/lawyer who I have always liked and respected. Most people will flip if the Government lets them out of trouble, even if it means lying or making up stories," Trump wrote. "Sorry, I don't see Michael doing that despite the horrible Witch Hunt and the dishonest media!"

Even if Cohen is inclined to share information about Trump with prosecutors, the government would likely want a judge to rule explicitly that the attorney-client privilege doesn't apply — either because Cohen was engaged in order to commit a crime or because the matter in question did not involve confidential legal advice.

"They have to be very careful. They don't want to taint the members of the Mueller team," said one former federal prosecutor who handled a case in which an attorney was charged criminally. "They get tainted with that, they're off this case. It's a pretty heavy penalty. ... They certainly could not simply bring [Cohen] in. They could not break that privilege without some court deciding that."

Adding to the complexity is the fact that Cohen also served as an attorney for the Trump Organization and acted on his own in various business deals. That means prosecutors could be entitled to ask some questions about Cohen's experiences in dealings with Russia, for example, but may not be entitled to pry into what Cohen told Trump on such issues or vice versa.

"They could ask about what he negotiated with the Russians but cannot ask what he told Trump or what Trump told him," said Silverglate. "The relationship between Trump and his lawyer was probably very mixed. If they were in business together and had a part of some deal together, that wouldn't surprise me."

Ultimately, divining that line will likely require a court-appointed special master to consider what is fair game for prosecutors. Any rulings on those questions could spur protracted litigation but could provide a road map for what prosecutors can talk to Cohen about and what they can't

"It's incredibly complicated. ... The special master is really essential," Silverglate added.

Veteran prosecutors say they can recall few, if any, instances in which attorneys agreed to testify freely about their clients — even in cases where attorneys have been prosecuted for alleged complicity in mafia or drug activity.

Cohen's dilemma does have at least one significant historical echo.

After President Richard Nixon's personal attorney, Herbert Kalmbach, pleaded guilty in 1974 to illegal fundraising for GOP congressional candidates, he agreed to cooperate with prosecutors to reduce his prison sentence and revealed that he knew of payments of illegal "hush money" to Watergate burglars.

Former White House counsel John Dean said Monday he does not recall attorney-client privilege being an issue because Kalmbach's activities were clearly in the fundraising and financial realm and not the provision of legal advice.

Dean, who served as White House counsel to Nixon from 1970 to 1973, said the president ultimately waived any attorney-client privilege to allow his own testimony. However, the president dropped the privilege issue only after Dean made clear he was planning to testify anyway on the ground that some of his actions amounted to crimes.

"Nixon waived the privilege, although he did know that I was going to blow right through it," said the former White House counsel, who pleaded guilty in 1973 to conspiracy to obstruct justice in connection with the payments Kalmbach made to the burglars. "I'd already flipped."

*Darren Samuelsohn contributed to this report.*

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## **Trump defiant over Iran deal as deadline approaches [Back](#)**

By Nahal Toosi and Quint Forgey | 04/24/2018 11:23 AM EDT

President Donald Trump and Iranian President Hassan Rouhani exchanged threats over the Iran nuclear deal Tuesday, with Trump warning that Tehran will face "big problems" if it restarts its nuclear program and Rouhani saying America will face "severe consequences" if it abandons the agreement.

Meanwhile, French President Emmanuel Macron, in Washington on a state visit, called for a "new deal" to complement the 2015 nuclear agreement, covering not just nuclear issues but also ballistic missiles and Iran's roles in conflicts in the Middle East, including the wars in Syria and Yemen.

If he convinces Trump that's worth pursuing, it could buy the nuclear deal more time.

The verbal warfare between Iran and Trump comes ahead of a deadline on May 12 for Trump to decide whether to re-impose some of the economic sanctions on Tehran that were lifted under the nuclear deal. The U.S. president, alongside Macron on Tuesday, repeatedly belittled the Barack Obama-era agreement but didn't say for sure if he'd walk away from it next month.

"It was insane. Ridiculous. It should have never been made," Trump said of the deal, warning Iranian officials that if they restart their nuclear program, they're "going to have big problems, bigger than they've ever had before."

Although Iran has suggested it might restart its nuclear activities should the deal collapse, analysts are divided on whether Tehran would follow through on its threat. Trump's harsh rhetoric, meanwhile, may simply be a tactic to intimidate Iran to accept new restrictions on its behavior that Washington has been demanding.

Macron's visit this week is considered a critical moment for U.S. allies and partners who want to keep the deal in place. The French leader, who has a relatively good relationship with Trump, appeared eager to prove to the U.S. leader that he sympathizes with concerns about the limits of the deal.

But Macron also said he doesn't want to tear up the existing agreement. Rather, he said, the goal is "to work on a new deal with Iran."

This "new deal" would include four pillars, Macron said. One is to block nuclear activity in Iran in the short term, which Macron noted the existing agreement does until parts of it start expiring in 2025. The other three pillars, he said, are having a longer-term agreement on stopping Iranian nuclear activity, putting "an end" to Iran's ballistic missile program, and laying groundwork for political solutions to conflicts in countries such as Yemen, Iraq, Syria and Lebanon, where Iran has significant influence.

Ministers from France and its allies that have already been meeting in small groups to look at ways to deal with Iran could work on establishing such a framework, Macron said. "The purpose is to have some allied powers and we among them and of course also the regional powers to work at the level of this small group" he said.

"And will have some discussions with Russia and Turkey on regional topics including Syria. So as from now, we will work using that method in favor — work towards a deal."

Macron's idea is akin to a "grand bargain" between world powers and Iran, and it is unlikely to become a reality anytime soon, especially if Iran wants major concessions from the West in return. Whether his pitch buys the deal more time could come down to whether Trump will feel comfortable casting Macron's approach as a way to "fix" the existing deal, something he's said he is willing to try before quitting it.

Trump's frustrations with the nuclear deal are many. He is unhappy that it doesn't cover Iran's ballistic missile program, that it doesn't allow for more intrusive international inspections of suspected nuclear sites and that some of its provisions expiring starting in 10 years.

Trump is also unhappy that Iran's non-nuclear activities in the Middle East, including its sponsorship of proxy militias in Arab countries, aren't covered by the agreement. Iran's regional rise has particularly alarmed Israel and Saudi Arabia, two staunch allies of the United States.

During multiple appearances Tuesday, Trump cited Iran's support for Syrian President Bashar Assad, whom U.S. officials allege is using chemical weapons in his fight against rebels. Trump also bemoaned Iran's role in the conflict in Yemen, where Saudi-led forces have been battling Houthi rebels backed by Tehran since March 2015.

Although the nuclear agreement took years to negotiate and was unveiled just a few months after the conflict in Yemen began, Trump was frustrated that it didn't cover the Yemen crisis.

"They should have made a deal that covered Yemen, that covered Syria, that covered other parts of the Middle East where ... Iran is involved," Trump said in a press conference alongside Macron.

Earlier in the day, Trump said the Iranians "have been butchers."

Iran's leaders, meanwhile, have stepped up their own campaign in favor of the existing deal, which they brokered with the Obama administration as well as France, Germany, China, Russia, and Britain.

The July 2015 deal lifted a broad set of nuclear-related U.S. and international sanctions on Iran in exchange for severe curbs on the country's nuclear program.

Iranian officials warn that they will respond if Trump reneges on the U.S. side of the deal.

"I am telling those in the White House that if they do not live up to their commitments... the Iranian government will firmly react," Rouhani, the Iranian president, said in a Tuesday speech, according to a Reuters [report](#).

"If anyone betrays the deal, they should know that they would face severe consequences," Rouhani said. "Iran is prepared for all possible situations."

Iran's foreign minister, Javad Zarif, said in an interview with The Associated Press published Tuesday that if the U.S. withdraws from the agreement, Iran will likely to do same.

"If the United States were to withdraw from the nuclear deal, the immediate consequence in all likelihood would be that Iran would reciprocate and withdraw," Zarif said. He added: "There won't be any deal for Iran to stay in."

In an interview that aired Sunday, Zarif told CBS News that his country could resume its nuclear program "at much greater speed." Zarif insisted, however, that didn't mean developing nuclear weapons because Iran "has never wanted to produce a bomb."

Iran has always said its nuclear program was peaceful, meant for energy and scientific purposes. But Western powers have long suspected Iran wants nuclear weapons capability.

*Maya Parthasarathy contributed to this report.*

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